

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : CRIMINAL ACTION

v. :

JAY BERGER : NO. 07-155

**MEMORANDUM**

**Baylson, J.**

**May 19, 2010**

Defendant Jay Berger filed a pro se Petition under 28 U.S.C. § 2255. The underlying conviction is based on a guilty plea to the indictment charging several counts of fraud.

The Defendant pleaded guilty on July 25, 2007 before Judge Marvin Katz, to whom this case was originally assigned, and the plea colloquy, attachment A to the government's response to the Petition, shows that Defendant was carefully questioned by Judge Katz, that under the plea agreement Defendant knew he was giving up any right to an appeal or to collaterally attack his conviction. Judge Katz also made it clear that the Defendant understood that he could not come back in the future to this Court, or any court, and claim that he was not guilty or that his rights had been violated. Defendant clearly and unequivocally stated that he understood this effect of pleading guilty.

Upon Judge Katz's retirement from duty, the case was transferred to the undersigned who held a sentencing hearing for the Defendant on June 2, 2008. There was testimony from a number of victims as to the nature of the Defendant's crimes, and the Court carefully stated its reasons for sentencing the Defendant for restitution, 78 months of imprisonment, and five years supervised release, which was within the applicable Guideline range (Doc. No. 45). The Court

stated on the record the reasons for the sentence, pursuant to 18 U.S.C. § 3355.

This Court had previously instructed the government to brief only the issue as to whether Defendant had a right to have this Court consider the merits of his § 2255 Petition in view of the waiver and colloquy at the guilty plea. The government has filed a Motion to Dismiss the Petition under the authority of United States v. Khattak, 273 F.3d 557 (3d Cir. 2001). Defendant asserts a number of constitutional violations, seeks recusal of the undersigned, appointment of counsel, and also that this Court require the government to respond to all of the detailed allegations in his Petition.

After reviewing the papers, including the hearing before Judge Katz, this Court finds that there has been no miscarriage of justice, and no reason why this Court should consider the merits of Defendant's Petition in view of the fact that he clearly waived any post-conviction appellate or collateral attack relief.

An appropriate Order follows.

O:\Criminal Cases\07-155 Berger, US v\Berger Memorandum Dismiss Petition.wpd